

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
EDWARD M. AND SUSAN M. MALONEY }

For Appellants: Robert Hessler, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;  
James T. Philbin, Junior Counsel

O P I N I O N

This appeal is made pursuant to Section 10594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Edward M. and Susan M. Maloney to proposed assessments of additional personal income tax in the amounts of \$897.95 and \$20.94 for the years 1955 and 1956, respectively.

Appellants are husband and wife and filed joint returns for the years in question. The husband conducted illegal book-making activities for three months in 1955 and part of one month in 1956.

The Internal Revenue Service assessed a wagering tax based on bets received as established from available records obtained from the premises. The monthly amounts of such bets as determined by the Internal Revenue Service were: October, 1955, \$10,625; November, 1955, \$11,050; December, 1955, \$11,050; and January, 1956, \$2,125. The total of these amounts is \$34,850.

In filing their joint federal income tax return for 1955 Appellants estimated that their net profit from bookmaking was 13 percent of total bets received and they adopted the Internal Revenue Service figure of \$34,850 as the latter amount.

Acting under Section 17297 of the Revenue and Taxation Code, Respondent disallowed all deductions from Appellants' gross income. Respondent determined that the gross income of Appellants included the amounts of bets received as computed by the Internal Revenue Service, which amounts reflect a daily volume of about \$425. Appellants contend that the daily amount of bets was between \$40 and \$100 with \$200 a day being the maximum that could have been received. They state that Appellant Edward Maloney so testified in a hearing before the Department of Alcoholic Beverage Control in 1956.

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The determination of Respondent as to the gross income of Appellants is presumptively correct. The testimony of Edward Maloney before the Department of Alcoholic Beverage Control simply shows a statement in conflict with the statement in Appellants' federal return. No records have been presented to us and no one has appeared before us as a witness. Clearly, Appellants have not carried their burden of proof.

## ORDER

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Edward M. and Susan M. Maloney to proposed assessments of additional personal income tax in the amounts of \$697.95 and \$20.94 for the years 1955 and 1956, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day of May, 1961,  
by the State Board of Equalization.

John W. Lynch, Chairman

George R. Reilly, Member

Paul R. Leake, Member

Richard Nevins, Member

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ATTEST: Dixwell L. Pierce, Secretary